

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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C.A. NO.128/88

DATE OF DECISION : 13.04.92

Shri Vipinchandra Murlidhar Aras ...Applicant

Vs.

Union of India & Anr.

...Respondents

COURT

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant. ...Shri D.M. Nargolkar

For the Respondents ...Shri P.P. Khurana

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*

2. To be referred to the Reporter or not? *Y*

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant, who is employed in HULCO as Assistant Chief Design and Development Officer assailed the order dt.23.10.1987 passed by respondent No.1 whereby the applicant was informed with reference to his letter dt. 16.9.1987 that, "As already informed to you by R&D Hrs., New Delhi vide their letters No.95770/1133/3/RD-23(B) dt.17 Jun 80 and No.95770/1133/3/RD-23(B) dt.28 Oct 80, (copies enclosed for ready reference) you are not entitled for grant of any terminal benefits since you do not hold a permanent appointment in this Organisation. In view of the position explained above your case is treated as closed." The applicant filed this application on 20.1.1988.

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2. The applicant claimed the relief that he be granted the terminal gratuity with interest amounting to Rs.29,190 upto 18.12.1987 with further interest @ 10% till the date of payment and also be allowed to carry forward the leave on absorption as per rules restricted to 122 days.

3. The facts of the case are that the applicant joined on 19.6.1965 as a Foreman in Defence Metallurgical Laboratory at Hyderabad. He was made quasi permanent w.e.f. 19.6.1968. He was thereafter promoted as a Junior Scientific Officer (JSO) w.e.f. 10.2.1972. In April, 1972, the applicant through proper channel applied in HUDCO for the post of Deputy Planner. The petitioner joined the post of Assistant Architect. On 15.7.1972, the applicant requested the Defence Department to relieve him and grant him permission to join the corporation. The applicant resigned from the Defence Department and joined the services with HUDCO on 18.8.1972. The applicant made a representation for grant of terminal benefits to him for the service he rendered from 19.6.1965 to 16.8.1972. Thus the case of the applicant is that he served the Government for 7 years and after serving there, he joined HUDCO, a Government

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of India enterprise. As such, the applicant is entitled to gratuity at 15 days wages for each completed year or the amount which the petitioner would get as matching contribution to the Provident Fund if the petitioner were a member of CPF from the date of his continuous service, whichever is more. He is entitled to the DCRG, which is 4 months' pay. The petitioner is, therefore, claiming terminal gratuity as Rs.3619 and DCRG as Rs.3140, i.e., a total sum of Rs.6759 and the interest on delayed payment @ 10% p.a.

4. The respondents contested the application and took the preliminary objection that the application is barred by time and is hit by Section 21 of the Administrative Tribunals Act, 1985. In this connection, the respondents have given a detailed narration in the counter in reply to paras-3 to 5 of the application. The applicant was informed as early as on 22.5.1973 by respondent No.1, DMRL, Hyderabad that since the applicant was not holding any permanent post under DRDO, he was not eligible for grant of terminal benefits and his claim was not sustainable as per the provisions of DCP OM ND.3/1/72-Estt.(c) dt.21.4.1972. This letter was acknowledged by the applicant by a subsequent representation

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dt.20.7.1973. He was again apprised by the rule by letter dt.31.7.1973 issued by R&DO Headquarters, New Delhi. The applicant, however, continued to make representation for grant of terminal benefits and was again informed by the letter dt.1.3.1976. He was again informed in the similar manner regarding the rule position by the letters dt.17.6.1980, 20.10.1980 and 20.12.1983. In the recent letter which has been challenged, i.e., letter dt.23.10.1983, it has only been stated that the applicant had already been informed vide Research and Development Organisation's letters dt.17.6.1980 and 28.10.1980 that he was not entitled for grant of any terminal benefits since he was not holding any permanent post under R&DO. As such, nothing new was told to the applicant by the impugned letter.

The cause of action has risen more than three years before the constitution of the Tribunal. The Tribunal has no jurisdiction to entertain the application. The respondents have also rebutted the claim on merits.

5. I have heard the learned counsel of the parties at length and have gone through the record of the case. The applicant joined HUDCO in August, 1972 and he was informed in 1973 that since he is not a permanent Government servant, his past services cannot be counted for terminal benefits. He

was also told that he cannot carry forward his leave.

Section 21 of the Administrative Tribunals Act, 1985 clearly lays down procedure for filing an application and it clearly provides a cut off date for the reliefs which have arisen three years before the coming into force of the Administrative Tribunals Act, 1985. Sub Section-2 of Section 21 lays down as follows :-

"(2) Notwithstanding anything contained in sub-section(1), where-

- (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
- (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a) or, as the case may be, clause (b), of sub-section(1) or within a period of six months from the said date, whichever period expires later."

Section-21 is a complete code in itself, hence common law is applicable to Writ Petition and does not apply to application under Section-19. Thus the cause of action has arisen to the applicant in 1973 and he did not approach the competent forum for redress of the grievances. Again he was informed in 1976 and 1980 and still he did not take any step in that direction. The applicant only had been making repeated representations. In view of the decision in Dr.S.S.Rathore Vs. State of M.P., AIR 1990 SC p-10, the repeated representation will not extend the period of

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limitation, which has expired. In view of the above facts, the objection taken by the respondents that the present application is hopelessly barred by time is substantiated by the latest view of the Hon'ble Supreme Court.

6. In view of the above facts, the present application is dismissed as barred by time leaving the parties to bear their own costs.

J.P. SHARMA
13.4.92
(J.P. SHARMA)
MEMBER (J)

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